

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

**North Bronson Former Facilities
Former Scott Fetzer Facility - OU3
Bronson, Michigan**

**ADMINISTRATIVE ORDER BY
CONSENT PURSUANT TO
SECTIONS 104, 107 AND 122 OF CERCLA**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No.	V-W-02-C-700
)		
)	ADMINISTRATIVE ORDER BY	
)	CONSENT PURSUANT TO	
North Bronson)	SECTIONS 104, 107 & 122 OF THE	
Former Facilities,)	COMPREHENSIVE ENVIRONMENTAL RESPONSE,	
Former Scott Fetzer)	COMPENSATION, AND LIABILITY ACT	
Facility)	OF 1980, as amended, 42 U.S.C.	
Bronson, MI)	§§ 9604, 9607 and 9622	
(B5Y1))		
)		
Respondent:)		
The Scott Fetzer)		
Company)		

I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order by Consent ("the Consent Order") is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and The Scott Fetzer Company, the Respondent. The Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607, and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D on September 14, 1987.

This Consent Order requires the Respondent to conduct a Streamlined Remedial Investigation and focused Feasibility Study ("RI/FS"), the scope of which is set forth in the attached Statement of Work ("SOW") incorporated herein, to investigate the nature and extent of contamination at the former Scott Fetzer manufacturing plant located in Bronson, Branch County, Michigan. The former Scott Fetzer manufacturing plant constitutes Operable Unit No. 3 ("OU3") of the North Bronson Former Facilities Site in Bronson, Michigan, (the "Site"), which is generally depicted in attached Figure A. This Consent Order also requires the Respondent, as part of the RI/FS, to develop and evaluate potential remedial alternatives to address any contamination at OU3 that presents an unacceptable risk to human health or the environment pursuant to 40 CFR §§ 300.415 and 300.430. Remedial action(s) to be selected through the RI/FS process will be described in a Record of Decision to be issued by U.S. EPA and is not addressed in this Consent Order.

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A copy of this Consent Order will also be provided to the State of Michigan, which has been notified of the issuance of this Consent Order. U.S. EPA and Michigan Department of Environmental Quality ("MDEQ") have also notified the Federal and State Natural Resource trustees of the negotiations in this action pursuant to the requirements of Section 122(j) of CERCLA.

The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Respondent's participation in this Consent Order does not constitute an admission of liability or of U.S. EPA's Findings of Fact or Conclusions of Law and Determinations contained in this Consent Order. Respondent further agrees that in a proceeding by U.S. EPA or the United States to enforce the terms of this Consent Order, it consents to and agrees not to contest the authority or jurisdiction of the U.S. EPA to issue or enforce this Consent Order, and agrees it will not contest the validity of this Consent Order or its terms.

II. PARTIES BOUND

This Consent Order applies to and is binding upon U.S. EPA, and upon Respondent and its receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Consent Order.

Respondent shall ensure that its contractors, subcontractors, and representatives involved in conducting activities required under this Consent Order receive a copy of this Consent Order, and comply with this Consent Order. Respondent shall be responsible for any noncompliance with this Consent Order.

III. STATEMENT OF PURPOSE

In entering into this Consent Order, the objectives of U.S. EPA and the Respondent are: (a) to determine the nature and extent of contamination caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from OU3, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from OU3, by conducting a feasibility study; and (c) to provide for the recovery of response and oversight costs incurred by U.S. EPA with respect to this Consent Order.

IV. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds, as follows:

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1. OU3 consists of the former Scott Fetzer Plant #1 and the Annex/CDF (Cyanide Destruction Facility) and is located at 141 Railroad Street in Bronson, Branch County, Michigan. OU3 is approximately three acres in size and is situated in the industrial area of Bronson, Michigan. OU3 was used for mold machining and tin and zinc plating operations. Universal Components Corporation, formerly known as Douglas Component Corporation, purchased OU3 from Scott Fetzer in 1984 and ceased operations at OU3 in the late 1980s. The Annex/CDF, which is located to the south of the main plant area, formerly housed a waste water treatment plant to treat waste water containing cyanide and a storage area for metals shavings. Three underground storage tanks (USTs) had been operated at OU3.
2. In 1910 Harry A. Douglas began operations of HA Douglas Manufacturing in Bronson. This company designed and manufactured automobile electrical parts. Metal plating operations were part of the manufacturing process which included cadmium, chromium, silver, tin, and zinc. At this time, the company was located at the southwest corner of West Railroad and Matteson Streets and was referred to as Plant No.1. In 1939 Plant No. 1 was connected to the western lagoons, which are part of the North Bronson Industrial Area (NBIA) Superfund Site, via an industrial sewer line. In 1940 HA Douglas Manufacturing merged with Kingston Products and became Kingston Products-Douglas Division. In the late 1940s, the Bronson Plant of Kingston Products manufactured automobile electrical products, military products, including track links and electrical switches, and consumer products, including appliance timers and vacuum cleaners. Additions to Plant No.1 were made in the 1940s and 1950s. In 1949, Plant No.1, reportedly ceased discharging wastes to the western lagoons and began discharging to the eastern lagoons, which are part of the NBIA Superfund Site, via a separate sewer line. In 1951, the Annex/CDF located south of the main plant on State Street, was constructed. At this time, the Douglas Division reportedly ceased discharging to the eastern lagoons because wastewater was being treated at the CDF and discharged directly to the storm sewers. The Annex/CDF operated until 1973.
3. In 1968, Kingston Products was sold to Scott Fetzer, and in 1969 OU3 became part of the Douglas Division of Scott Fetzer. Beginning in 1973, Plant No.1 plating processes included zinc and tin. Consequently, cyanide destruction processes ended and the plant was modified to remove metals and phosphate from the waste stream. In 1977 or 1978 the acid-tin process line was stopped, and in 1981 the alkaline-zinc process line was stopped. By 1987, the zinc-phosphate line stopped, which meant all plating at Plant No.1 had ceased. In 1988 approximately 325 gallons of PCB oil (from electrical transformers) reportedly was removed from the site by Great Lakes Environmental Services, Inc. (RI/FS Report, 7/93 NBIA)

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4. Michigan Department of the Environment (MDEQ) Kalamazoo District Office, recently conducted demolition and fencing activities at OU3. Buildings and the annex were demolished, subsurface structures, such as concrete slabs, piping, etc., were removed to a depth of 3 feet below grade. Concrete pits were pumped, removed and backfilled to grade. The three USTs were also removed. Contaminated materials currently exist in the former Plating Area (concrete) and Materials Handling Area (soils). The materials have been capped with visqueen and one foot of soil. A fence currently surrounds OU3.
5. As part of the Remedial Investigations for the NBIA Superfund Site that took place from 1989 - 1993, Michigan Department of Natural Resources (now MDEQ) investigated OU3 during Phase II sampling activities and samples were collected for surface soils, subsurface soils, and groundwater. All samples were collected on the perimeter of the Facility's buildings and because no access to OU3 was provided at the time. Metals, TCE, 1,2-DCE and 1,1,1-TCA were detected in soils. TCE, 1,2-DCE, and vinyl chloride were the highest concentrations detected in groundwater. Based on these studies, OU3 is potentially a source for chlorinated ethenes at the Site.
6. As part of Investigations for Operable Unit 2 - Industrial Sewer of the NBIA Superfund Site, MDEQ investigated the industrial sewer that runs along OU3 and was used by OU3 to discharge waste to the eastern and western lagoons. Results of these studies are presented in Technical Memoranda 1 and 2 dated 1998 and 2000. Results of these investigations show TCE contamination in soil and ground- water. OU3 is believed to be a source of groundwater contamination in the area. The Industrial Sewer also may be a source of groundwater contamination.
7. On September 27, 2000, the Respondent, along with other parties, was issued a Special Notice Letter to begin negotiations with U.S. EPA to conduct a Baseline Risk Assessment and Feasibility Study at the Operable Unit 2 of the NBIA Superfund Site. Negotiations for this Operable Unit resulted in an agreement to evaluate potential individual source areas, such as OU3. By letter dated March 8, 2001, U.S. EPA provided Scott Fetzer with the option to either (1) terminate negotiations regarding OU2 of the NBIA as stated in the September 28, 2000 Special Notice Letter and negotiate with U.S. EPA related to the work set forth in this Consent Order; or (2) submit a good faith offer for OU2 of the NBIA. Scott Fetzer elected to terminate negotiations as to OU2 of the NBIA Site and begin negotiations with U.S. EPA related to the work set forth in this Consent Order.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record in this matter, U.S. EPA has determined that:

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1. The former Scott Fetzer manufacturing plant in Bronson, Michigan, which constitutes OU3, is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Cyanide, zinc, chromium, other metals, TCE and other VOCs and SVOCs are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent is a person who either allegedly generated the hazardous substances found at OU3, is a person who at the time of disposal of any hazardous substances owned or operated OU3, or is a person who arranged for disposal or transport for disposal of hazardous substances at OU3. Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The presence of hazardous substances at OU3 constitutes actual and/or threatened "releases" of hazardous substances into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
6. The actions required by this Consent Order are necessary to protect the public health, welfare, or the environment, and are consistent with the National Contingency Plan ("NCP") and CERCLA, §§ 9604(a)(1) and 9622(a).

VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that the Respondent shall comply with the following provisions, including but not limited to all attachments to this Consent Order, and all documents incorporated by reference into this Consent Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, On-Scene Coordinator or Remedial Project Manager

Respondent shall perform the actions required by this Consent Order itself or retain a contractor to undertake and complete the requirements of this Consent Order. Respondent shall notify U.S. EPA of Respondent's qualifications or the name and qualifications of such contractor, whichever is applicable, within 30 days of the effective date of this Consent Order. Respondent also shall notify U.S. EPA of the name and qualifications of any other contractors or major subcontractors retained to perform work under this Consent Order at least 10 days prior to commencement of any work by such contractor or subcontractor. With respect to itself or any

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proposed contractor, the Respondent shall demonstrate that it or the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of its or the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. U.S. EPA retains the right to disapprove of the Respondent's conducting any work itself or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA so disapproves Respondent or Respondent's selected contractor, Respondent shall retain a different contractor within 30 days following U.S. EPA's disapproval, and shall notify U.S. EPA of that contractor's name and qualifications within 34 days of U.S. EPA's disapproval.

Within 10 days after the effective date of this Consent Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Consent Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 30 days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 34 days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Consent Order shall constitute receipt by Respondent.

The U.S. EPA has designated Giang-Van Nguyen of the Remedial Response Branch, Region 5, as its Remedial Project Manager ("RPM"). The MDEQ's Project Manager is Deborah Larsen. Respondent shall direct all submissions required by this Consent Order to the U.S. EPA RPM and copy the MDEQ Project Manager, along with the required copies in accordance with Section XIX (Submittals/Correspondence). Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

U.S. EPA, MDEQ, and Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated RPM or Project Coordinator. U.S. EPA and MDEQ shall notify the Respondent, and Respondent shall notify U.S. EPA and MDEQ, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification of any change may be made orally but it shall be promptly followed by a written notice within 4 days of oral notification.

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2. Work to Be Performed

Respondent shall develop and submit to U.S. EPA an RI Report and an FS Report in accordance with the attached SOW. This SOW is incorporated into and made an enforceable part of this Consent Order. U.S. EPA will consider the nature and extent of any completed investigation activities conducted for the Site, including but not limited to the MDEQ investigations relating to the Site, in determining the extent of RI/FS activities to be performed under this Consent Order and so as to avoid duplication of work at the Site, as appropriate.

The RI and FS Reports shall be substantially consistent with, at a minimum, U.S. EPA guidance entitled, "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (U.S. EPA, Office of Emergency and Remedial Response, October, 1988) and any other publicly available guidance that U.S. EPA uses in conducting a RI/FS, provided that it is understood by both parties that the streamlined remedial investigation and focused feasibility study, including the risk assessment, may incorporate the remedial investigation work previously performed at the Site or at the NBIA Superfund Site, as appropriate.

2.1 RI/FS Work Plan

Within 45 days of the effective date of this Consent Order, Respondent shall submit to U.S. EPA for review an RI/FS Work Plan for further investigation of OU3. U.S. EPA may approve, disapprove, require revisions to, or modify the RI/FS Work Plan. If U.S. EPA requires revisions, Respondent shall submit a Revised Work Plan addressing all of U.S. EPA's required revisions within 30 days of receipt of U.S. EPA's notification of the required revisions.

In the event of U.S. EPA disapproval of the Revised Work Plan, Respondent may be deemed in violation of this Consent Order. In such event, U.S. EPA retains all of its rights under this Consent Order and CERCLA, including, but not limited to, the right to terminate this Consent Order, complete all RI/FS activities, and obtain reimbursement from Respondent for costs incurred in conducting such RI/FS activities .

Upon approval by U.S. EPA, Respondent shall implement all activities required by the (Revised) Work Plan in accordance with the approved schedule. Respondent shall not commence or undertake implementation of the (Revised) Work Plan without prior U.S. EPA approval.

2.1.1 Health and Safety Plan

As part of the RI/FS Work Plan, the Respondent shall submit for U.S. EPA review and comment a health and safety plan that complies with the applicable Occupational Safety and Health Administration ("OSHA") and EPA requirements, including 29 CFR § 1910.120. Respondent

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shall address all changes to the health and safety plan recommended by U.S. EPA, and implement the plan during the performance of work under this Consent Order.

2.1.2 Sampling and Analysis Plan

As part of the RI/FS Work Plan, the Respondent shall submit for U.S. EPA review and comment, a Sampling and Analysis Plan that ensures that all sampling and analyses performed pursuant to this Consent Order conforms to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures, including, without limitation, "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA 240/B-01/003, March 2001). Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

Respondent shall assure that work performed, samples taken and analyses conducted conform to the requirements of the Statement of Work, the QAPP and guidances identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondent shall only use laboratories which have a documented quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements.

Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondent shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with, at a minimum, OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondent shall allow U.S. EPA, or its authorized representative, to take split and/or duplicate samples of any samples collected by Respondent or their contractors or agents while performing work under this Consent Order. Respondent shall notify U.S. EPA not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by U.S. EPA. U.S. EPA shall have the right to take any additional samples that it deems necessary. Upon request by Respondent, U.S. EPA shall allow the Respondent or its authorized

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representative to take split and/or duplicate samples of any samples taken by U.S. EPA or its authorized representative.

2.2 RI and FS Reports

Within 90 days following receipt of the validated results of the last field sample collected as part of the RI, the Respondent shall submit to U.S. EPA for approval a RI Report, including a risk assessment, that is consistent with this Consent Order and the SOW.

U.S. EPA may approve, disapprove, require revisions to, or modify the RI Report. If U.S. EPA requires revisions, Respondent shall submit a revised RI Report addressing all of U.S. EPA's required revisions within 60 days of receipt of U.S. EPA's notification of the required revisions.

Within 60 days of receipt of notification of U.S. EPA's approval of the (Revised) RI Report, the Respondent shall submit to U.S. EPA for approval a FS Report that is consistent with this Consent Order and the SOW.

U.S. EPA may approve, disapprove, require revisions to, or modify the FS Report. If U.S. EPA requires revisions, Respondent shall submit a revised FS Report addressing all of U.S. EPA's required revisions within 60 days of receipt of U.S. EPA's notification of the required revisions.

In the event of U.S. EPA disapproval of either the (Revised) RI Report or the (Revised) FS Report, Respondent may be deemed in violation of this Consent Order. In such event, U.S. EPA retains all of its rights under this Consent Order and CERCLA, including, but not limited to, the right to terminate this Consent Order, complete all RI/FS activities, and obtain reimbursement from Respondent for costs incurred in conducting such RI/FS activities .

The (Revised) RI Report and FS Report shall include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this Report, the information submitted is true, accurate, and complete.

Respondent shall not commence or undertake any remedial actions at the Site without prior U.S. EPA approval. This Consent Order does not address, nor does it require Respondent to commence or undertake, any removal or remedial design/remedial activities at the Site.

2.3 Reporting

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Respondent shall submit a monthly written progress report to U.S. EPA concerning actions undertaken pursuant to this Consent Order. Respondent shall submit these progress reports by the tenth day of every month following the effective date of this Consent Order, until termination of this Consent Order, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding month, including the work performed and any problems encountered, validated analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

2.4 Additional Work

In the event that the U.S. EPA or the Respondent determines that additional RI or FS work is necessary to accomplish the objectives of the (Revised) RI Report or FS Report, notification of such additional work shall be provided to the other party in writing. Any additional work which Respondent determines to be necessary shall be subject to U.S. EPA's written approval prior to commencement of the additional work. Respondent shall complete, in accordance with standards, specifications, and schedule U.S. EPA has approved, any additional work Respondent has proposed, and which U.S. EPA has approved in writing or that U.S. EPA has determined to be necessary to accomplish the objectives of either the (Revised) RI Report or FS Report, and has provided written notice of such additional work pursuant to this paragraph.

3. Access to Property and Information

Respondent shall exercise its best efforts to obtain access to OU3 and off-site areas, if any, to which access is necessary to implement this Consent Order, and shall provide access to all non-privileged records and documentation related to the conditions at the Site which are generated by it or on its behalf as a result of actions conducted pursuant to this Consent Order. Such access shall be provided to U.S. EPA and representatives. These individuals shall be permitted to move freely at OU3 and appropriate off-site areas to which Respondent has access in order to conduct actions which U.S. EPA determines to be necessary.

Respondent shall use its best efforts to obtain all necessary access agreements within 30 days after the effective date of this Consent Order, or as otherwise agreed to in writing by the RPM. Respondent shall immediately notify U.S. EPA within 7 days if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may, in its discretion, then assist Respondent in gaining access, to the extent necessary to effectuate the actions described herein, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

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Respondent shall preserve all documents and information (excluding draft reports) in its possession relating to work performed under this Consent Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the actions required by this Consent Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondent shall notify U.S. EPA that such non-privileged documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide copies of any such non-privileged documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. If Respondent asserts a privilege in lieu of providing documents, it shall provide U.S. EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Order shall be withheld on the grounds that they are privileged.

5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Consent Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Revised Off-Site Rule, 40 CFR § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

6. Compliance With Other Laws

Respondent shall perform all activities required pursuant to this Consent Order in accordance with all the requirements of all federal and state laws and regulations. U.S. EPA has determined that the activities required by this Consent Order are consistent with the NCP.

As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the activities conducted entirely on-site. Where any portion of the activities is to be conducted off-site and requires a federal or state permit or approval, the Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. In the event that such permits are not issued to allow for off-site activities, U.S. EPA agrees that the specific activities directly related to and dependant upon such permit may be deferred until the permit is issued.

This Consent Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

7. Emergency Response and Notification of Releases

If there is any incident or change in conditions at OU3 resulting from the activities of Respondent conducted pursuant to this Consent Order that causes or threatens to cause an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such endangerment. Respondent shall also immediately notify the RPM or, in the event of her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or change in conditions at OU3. If Respondent fails to respond, U.S. EPA and MDEQ may respond to the endangerment and reserve the right to recover costs associated with that response.

Respondent shall submit a written report to U.S. EPA within 10 days after reporting to U.S. EPA each incident, setting forth the events that occurred and the measures taken or to be taken to mitigate any endangerment and to prevent the reoccurrence of such an incident. Respondent shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

VII. AUTHORITY OF THE U.S. EPA REMEDIAL PROJECT MANAGER

The RPM shall be responsible for overseeing the implementation of this Consent Order. The RPM shall have the authority vested in an RPM and OSC by the NCP, including the authority to halt, conduct, or direct any activities required by this Consent Order, or to direct any other response action undertaken by U.S. EPA, or Respondent at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

VIII. REIMBURSEMENT OF COSTS

Respondent shall pay all Oversight Costs of the United States for OU3 that are not inconsistent with the NCP. U.S. EPA will send Respondent a bill for "oversight costs" on an annual basis. In the event of any specific questions regarding specific costs, Respondent may obtain copies of contractors, consultants and other authorized representatives's monthly reports, invoices or equivalent documentation of oversight costs upon written request to the U.S. EPA. "Oversight Costs" are all costs, including, but not limited to, direct and indirect costs, that U.S. EPA, and their employees, agents, contractors, consultants, and other authorized representatives incur in reviewing or developing plans, reports and other items pursuant to this AOC. "Oversight Costs" shall also include all costs, including direct and indirect costs, paid by the United States relating to this AOC between March 25, 2001, and the effective date of this AOC.

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Except as otherwise provided in Section IX of this Consent Order, Respondent shall, within 60 days of receipt of a bill from U.S. EPA, remit a check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - North Bronson Former Facilities- Scott Fetzer Subarea Site" and shall reference the payor's name and address, the U.S. EPA site identification number (B5Y1), and the docket number of this Consent Order.

In the event that any payment is not made within the deadline described above, Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date payment of the bill is due. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

The Respondent may contest payment of any Oversight Costs if it determines that the U.S. EPA has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the U.S. EPA pursuant to Section XIX of this Consent Order. Any such objection shall specifically identify the contested Oversight Costs and the basis for objection. In the event of an objection, the Respondent shall within the 60-day period pay all uncontested Oversight Costs to the U.S. EPA in the manner described in this Section. Simultaneously, the Respondent shall initiate the Dispute Resolution procedures in Section IX. If the U.S. EPA prevails in the dispute, within five (5) days of the resolution of the dispute, the Respondent shall pay the sums due (plus Interest accrued) to the U.S. EPA. If the Respondent prevails concerning any aspect of the contested costs, the Respondent shall pay that portion of the costs (plus Interest accrued) for which it did not prevail to the U.S. EPA. The dispute resolution procedures set forth in this Section in conjunction with the Dispute Resolution procedures set forth in Section IX shall be the exclusive mechanism for resolving disputes regarding the Respondent's obligation to reimburse the U.S. EPA for its Oversight Costs.

IX. DISPUTE RESOLUTION

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The Scott Fetzer Company

The parties to this Consent Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Consent Order.

If a dispute arises in connection with any U.S. EPA action taken pursuant to this Consent Order, the Respondent shall notify U.S. EPA in writing of its objection(s) within 30 days of the date that the dispute arises, unless the dispute(s) has (have) been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which the Respondent relies (hereinafter the "Statement of Position"). In the event Respondent receives supporting documentation from the U.S. EPA after the submission of its written notice of the dispute, it may supplement its written notice by submitting said documentation separately to the U.S. EPA.

Within 20 days of U.S. EPA's receipt of the Respondent's Statement of Position, U.S. EPA and Respondent shall attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period of 20 days may be extended at the sole discretion of U.S. EPA. U.S. EPA's decision regarding an extension of the Negotiation Period shall not constitute a U.S. EPA action subject to dispute resolution or a final Agency action giving rise to judicial review.

An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph.

Any agreement reached by the parties pursuant to this Section shall be in writing, signed by all parties, and shall upon the signature by the parties be incorporated into and become an enforceable element of this Consent Order. If the parties are unable to reach an agreement within the Negotiation Period the Director of the U.S. EPA Superfund Division, Region 5, will issue a written decision on the dispute to the Respondent. The decision of U.S. EPA shall be incorporated into and become an enforceable element of this Consent Order upon Respondent's receipt of the decision regarding the dispute.

Respondent's obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this Section, unless U.S. EPA agrees otherwise. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. No U.S. EPA decision made pursuant to this Section shall constitute a final Agency action giving rise to judicial review.

X. FORCE MAJEURE

Administrative Order by Consent
The Scott Fetzer Company

Respondent agrees to perform all requirements under this Consent Order within the time limits established under this Consent Order, unless the performance is delayed by a *force majeure*. For purposes of this Consent Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent that delays or prevents performance of any obligation under this Consent Order despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the work, increased cost of performance, or normal weather events.

Respondent shall notify U.S. EPA orally within five (5) days after Respondent becomes aware of any event that Respondent contends constitutes a *force majeure*, and in writing within 7 days after Respondent becomes aware of any events which constitute a *force majeure*. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay; including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delays. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a *force majeure*, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay to the satisfaction of U.S. EPA.

If U.S. EPA determines a delay in performance of a requirement under this Consent Order is or was attributable to a *force majeure*, the time period for performance of that requirement shall be extended by U.S. EPA for such time as is necessary to complete the required performance. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Consent Order which are not directly affected by the *force majeure*. However, if subsequent obligations are related to or connected to the obligation affected by the *force majeure* event, U.S. EPA may allow extensions of time for such related obligations.

XI. STIPULATED AND STATUTORY PENALTIES

For each day that Respondent fails to fully perform any requirement of this Consent Order in accordance with the schedule established pursuant to this Consent Order, Respondent shall be liable as follows:

<u>Deliverable/Activity</u>	<u>Penalty For Days 1-7</u>	<u>Penalty For Days 8-30</u>	<u>Penalty For Days > 30</u>
Failure to Submit a Work Plan or RI or FS Report	\$100/Day	\$500/Day	\$1,500

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Failure to Submit a revised Work Plan or RI or FS Report	\$100/Day	\$500/Day	\$1,500
Failure to Submit a Data Report	\$100/Day	\$500/Day	\$1,500
Late Submittal of Progress Reports or Other Miscellaneous Reports/Submittals	\$50/Day	\$100/Day	\$1,000
Failure to Meet any Other Scheduled Deadline in the Consent Order	\$50/Day	\$100/Day	\$1,000

Upon receipt of written demand by U.S. EPA, Respondent shall make payment to U.S. EPA within thirty (30) days and interest shall accrue on late payments in accordance with Section VIII of this Consent Order ("Reimbursement of Costs").

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether U.S. EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation(s) to complete the performance of the work required under this Consent Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondent prevails upon resolution, Respondent shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section.

The stipulated penalties set forth above shall not be the sole or exclusive remedy for violations of this Consent Order and shall not preclude U.S. EPA from pursuing any other remedy or sanctions which are available in the event of the Respondent's failure to comply with this Consent Order, provided, however, that any payments of stipulated penalties shall serve as credit toward any statutory or other penalties that may be assessed. Should Respondent violate this Consent Order or any portion hereof, U.S. EPA may carry out all or part of the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §§ 9604. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this Consent Order.

XII. RESERVATION OF RIGHTS

Except as specifically provided in this Consent Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or oil or hazardous or solid waste on, at, or from the Site. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. U.S. EPA reserves its rights in regard to claims, prior actions, orders, or agreements with Respondent. The covenant not to sue by U.S. EPA set forth in Section XIV does not pertain to any matters other than those expressly identified therein. The United States and U.S. EPA reserve, and this Consent Order is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to:

- a. liability for failure of Respondent to meet a requirement of this Consent Order;
- b. liability for costs incurred or to be incurred that are not Past Response Costs or Oversight Costs as defined in Section VII of this Consent Order;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, excluding work performed under the terms of this Consent Order;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

XIII. OTHER CLAIMS

By issuance of this Consent Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA, shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Consent Order.

Except as expressly provided in Section XIV (Covenant Not To Sue), nothing in this Consent Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Consent Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for

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costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Consent Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Consent Order.

No action or decision by U.S. EPA pursuant to this Consent Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIV. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Consent Order, upon issuance of the notice referred to in Section XVIII (Notice of Completion), U.S. EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform actions agreed to in this Consent Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Consent Order, in consideration and upon Respondent's payment of the Oversight Costs specified in Section VIII of this Consent Order, U.S. EPA covenants not to sue or to take administrative action against Respondent under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of Oversight Costs incurred by the United States in connection with this action or this Consent Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the payments required by Section VIII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Consent Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

XV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondent for matters addressed in this Consent Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4).

Nothing in this Consent Order precludes any party to this Consent Order from asserting any claims, causes of action or demands against any persons not parties to this Consent Order for indemnification, contribution, or cost recovery.

XVI. INDEMNIFICATION

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Respondent agrees to indemnify, save and hold harmless the United States and its agencies, departments, officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, successors or assigns, in carrying out actions pursuant to this Consent Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. The U.S. EPA shall not be construed to be a party to any contract involving the Respondent at the Site.

XVII. MODIFICATIONS

Except as otherwise specified in Section VI. 2. (Work To Be Performed), if any party believes modifications to any plan or schedule are necessary during the course of this project, they shall conduct informal discussions regarding such modifications with the other party. Any agreed-upon modifications to any plan or schedule shall be memorialized in writing within 10 days; however, the effective date of the modification shall be the date of the RPM's oral direction. Any other requirements of this Consent Order may be modified in writing by mutual agreement of the parties. Any modification to this Consent Order shall be deemed to be incorporated into and made an enforceable part of this Consent Order.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Consent Order, and to comply with all requirements of this Consent Order unless it is formally modified.

XVIII. NOTICE OF COMPLETION

When U.S. EPA determines that all work, including the (Revised) RI Report and FS Report, has been fully performed in accordance with this Consent Order, except for certain continuing obligations required by this Consent Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondent.

XIX. SUBMITTALS/CORRESPONDENCE

Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Consent Order, shall

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be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile in accordance with this section.

Correspondence and communications from U.S. EPA and MDEQ shall be addressed to:

Stephen Q. Giblin
Jones, Day, Reavis & Pogue
North Point
901 Lakeside Ave.
Cleveland, Ohio 44114

with a copy to:

The Scott Fetzer Company
Attn: General Counsel
28800 Clemens Road
Westlake, Ohio 44145-1797

All correspondence, communication, and submittals from Respondent shall be directed to the following and additional individuals they identify:

Giang-Van Nguyen
Remedial Project Manager
United States Environmental Protection Agency
77 West Jackson Blvd., Mailcode SR-6J
Chicago, Illinois 60604-3590
Phone (312) 886-6726
FAX (312) 886-4071
Email "nguyen.giangvan@epa.gov"

With copies to:

Deborah Larsen
Project Manager
Michigan Department of Environmental Quality
301 S. Capital
Lansing, Michigan 48909

Larry L. Johnson
Associate Regional Counsel
U.S. EPA - Region 5

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77 West Jackson Boulevard, C-14J
Chicago, Illinois 60606-3590
Phone (312) 886-6609
FAX (312) 886-0747
E-mail "johnson.larry@epa.gov"

XX. COORDINATION WITH NATURAL RESOURCES TRUSTEES

Pursuant to Sections 104(b)(2) and 122(j) of CERCLA, 42 U.S.C. 9604(b)(2) and 9622(j), U.S. EPA and MDEQ have also notified the Trustees of the negotiation of this Consent Order.

Upon completion and approval of the RI/FS pursuant to Section VI of this Consent Order, Respondent may request that the Trustees enter into a covenant not to sue for natural resource damage assessment activity commensurate with the extent to which the Respondent's work performed under this Consent Order satisfies the injury determination and other natural resource damage assessment requirements or the restoration, rehabilitation or replacement, or compensation requirements of 15 CFR Part 990 or 43 CFR Part 11. The Trustees shall not be required to enter into any such covenant not to sue for natural resource damage assessment activity.

XXI. SEVERABILITY

If a court of competent jurisdiction issues an order that invalidates any provision of this Consent Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Consent Order, Respondent shall remain bound to comply with all provisions of this Consent Order not invalidated by the court's order.

XXII. EFFECTIVE DATE AND COMPUTATION OF TIME

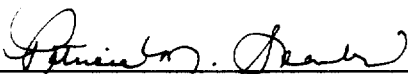
This Consent Order shall be effective upon signature by the Director, Superfund Division, U.S. EPA Region 5. For the purposes of this Consent Order, the term "day" shall mean a calendar day. In computing any period of time under this Consent Order, where the last day of the period would fall on a Saturday or Sunday, the period shall run until the following Monday, or where the last day of the period would fall on a federal holiday, the period shall run until the following day that is not either a federal holiday, Saturday or Sunday.

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SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

THE SCOTT FETZER COMPANY

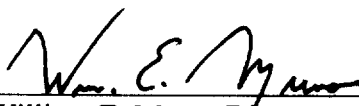
By: 
(Signature)

5/14/02
DATE

PATRICIA M. SCANLON
(Print Name)

Title: Vice President & General Counsel

IT IS SO ORDERED AND AGREED


William E. Muno, Director
Superfund Division
United States Environmental
Protection Agency
Region 5

6/5/02
(DATE)